

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLARK EQUIPMENT COMPANY,

Plaintiff,

v.

CHRISTOPHER WALLS,
BOBCAT RENTALS CO.

Defendants.

No.

COMPLAINT

TRIAL BY JURY DEMANDED

Plaintiff Clark Equipment Company, by its attorneys, Quarles & Brady LLP, hereby states its Complaint against Defendants Christopher Walls and Bobcat Rentals Co. (collectively, “Defendants”), as follows:

THE PARTIES

1. Plaintiff Clark Equipment Company, doing business as Bobcat Company, (“Plaintiff” or “Bobcat Company”) is a Delaware corporation with its principal place of business located at 250 East Beaton Drive, West Fargo, North Dakota 58078.

2. Upon information and belief, Defendant Christopher Walls (“Mr. Walls”) is Washington state resident residing at 318 138th Street E, Tacoma, Washington 98445.

3. Upon information and belief, Defendant Bobcat Rentals Co. (“Bobcat Rentals”) is a registered Washington for profit corporation located in the State of Washington with a principal place of business at 12602 Pacific Ave. S., Tacoma, Washington 98444.

4. According to the Washington Secretary of State’s corporate database, on August 30, 2021, Mr. Walls filed to register Bobcat Rentals with the State of Washington. Mr. Walls is listed as the sole registered agent and President of Bobcat Rentals.

JURISDICTION AND VENUE

5. This is an action for trademark infringement arising under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); false designation of origin arising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); unfair competition arising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); dilution by blurring and/or tarnishment under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(c); and trademark infringement under Washington common law.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1121, 1331 and 1338(a)-(b).

7. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

8. This Court has personal jurisdiction over Mr. Walls under RCW 4.28.185(1) because Christopher Walls, either independently or acting through Bobcat Rentals, transacts business within the State of Washington and the Western District of Washington.

9. This Court has personal jurisdiction over Bobcat Rentals under RCW 4.28.185(1) because Bobcat Rentals transacts business within the State of Washington and the Western District of Washington.

10. Defendants have caused and are causing injury and damages within Washington and this judicial district by committing infringing acts within Washington and this judicial district through their unauthorized and infringing use of various BOBCAT-related marks.

11. Venue in the Western District of Washington is proper under 28 U.S.C. § 1391.

FACTS GIVING RISE TO THIS ACTION

Bobcat Company

12. Bobcat Company is a leading global provider of compact equipment for construction, landscaping, agriculture, and related goods and services.

13. In 1958, Bobcat Company introduced the first compact loader into the market under its BOBCAT trademark. For over 60 years, Bobcat Company has manufactured and sold BOBCAT-branded loaders, excavators, backhoes, and other machines.

14. Bobcat Company's website, available at www.bobcat.com, provides information about its BOBCAT-branded equipment. Bobcat Company owns and uses the domain name <www.bobcat.com> for a website providing information about the company and its BOBCAT equipment. (**Exhibit A**).

15. Bobcat Company's BOBCAT-branded equipment is sold, rented, and serviced throughout the United States through an extensive dealer network, and each dealer is granted authorization to use certain BOBCAT-formative trademarks in connection with its business name and a domain name pursuant to its dealer agreement.










16. Some of Bobcat Company's authorized dealers operate domain names composed of BOBCAT-formative marks followed by terms descriptive of rental services provided, e.g., www.bobcatrents.com (redirecting to carletonequipment.com) and www.rentbobcatmemphis.com (redirecting to williamsequipment.com).






17. Peak Machinery is the authorized dealer of and service provider for Bobcat equipment in the Washington and Northern Idaho regions and offers 6 locations in the Pacific Northwest, including Bobcat of Olympia, located at 3121 Pacific Ave SE Olympia, WA 98501. Peak Machinery provides its services within the same geographic region as Bobcat Rentals.

18. Since at least as early as 1958, Bobcat Company has used a variety of BOBCAT-formative trademarks (the "BOBCAT Marks").

19. Bobcat Company owns a multitude of U.S. trademark registrations for BOBCAT-formative marks, including the following:

U.S. Reg. No.	Trademark	Goods/Services	Reg. Date
670566	BOBCAT	(Int'l Class: 7) Backhoes for attachment to trucks, tractors, trailers and the like, and parts therefor	1958-12-02
890034	BOBCAT	(Int'l Class: 12) Self-propelled vehicle having front end mounting means for various attachments actuated by the power means of said vehicle	1970-04-28
1620865	BOBCAT	(Int'l Class: 8) Hand tools - namely, shovels, scrapers, rakes and post hole diggers.	1990-11-06
1577764	BOBCAT	(Int'l Class: 17) Cylinder seals and o-rings for use in industrial machines	1990-01-16
1677100	BOBCAT	(Int'l Class: 41) Instruction services in the field of operation and repair of mobile machinery.	1992-02-25
1661108	BOBCAT	(Int'l Class: 37) Repair services for mobile, industrial, construction and excavating machinery; rental services for machinery; namely, rental of skid steer loaders, articulated front end loaders, back hoes, trenchers and excavators.	1991-10-15
1651245	BOBCAT	(Int'l Class: 1) Hydraulic, hydrostatic and transmission fluid for off-road machinery.	1991-07-23
1153505	BOBCAT	(Int'l Class: 42) Rental of skid steer loaders.	1981-05-05
1604367	BOBCAT	(Int'l Class: 7) Attachments for skid steer loaders - namely, backhoes, rotary brooms, landscape rakes, hydraulic breakers, grapples and combination buckets; machinery - namely, trenchers, excavators, skid steer loaders, articulated front end loaders, backhoes, and parts therefor; ignition tune-up kits, including rotors, condensers, points and spark plugs; excavator customer maintenance kits, namely, belts, light bulbs, fuses, digging teeth, bolts, motor oil and hydraulic fluid; filters for machinery - namely, hydraulic fluid filters, engine oil filters and air filters; remanufactured engines; remanufactured starters; remanufactured alternators; remanufactured hydraulic pumps; and remanufactured hydraulic motors.	1990-07-03
2027135	BOBCAT	(Int'l Class: 16) Parts manuals; owners manuals; service manuals; and parts catalogs in the field of industrial machines and products.	1996-12-31
4764615	BOBCAT ADVANTAGE	(Int'l Class: 35) Providing information about earth moving, construction and agricultural equipment, namely, providing consumer product information about equipment specifications, performance, and equipment comparisons	2015-06-30

U.S. Reg. No.	Trademark	Goods/Services	Reg. Date
1604285	BOBCAT LOGO 	(Int'l Class: 4) Lubricants - namely, motor oil.	1990-07-03
1609572	BOBCAT LOGO 	(Int'l Class: 7) Attachments for skid steer loaders - namely, rotary brooms, landscape rakes, hydraulic breakers, backhoes, grapples and combination buckets; machinery - namely, skid steer loaders, articulated front end loaders, backhoes, excavators and parts therefor; ignition tune-up kits, comprising rotors, condensers, points and spark plugs; excavator customer maintenance kits comprising light bulbs, fuses, digging teeth, bolts, motor oil and hydraulic fluid; filters for machinery - namely, hydraulic fluid filters, engine oil filters and air filters; remanufactured engines; remanufactured starters; remanufactured alternators; remanufactured hydraulic pumps; and remanufactured hydraulic motors	1990-08-14
1577757	BOBCAT LOGO 	(Int'l Class: 16) Parts manuals; owners manuals; service manuals; and parts catalogs in the field of industrial machines and products	1990-01-16
1633201	BOBCAT LOGO 	(Int'l Class: 17) Kits consisting primarily of cylinder seals for machinery kits; consisting primarily of o-rings for machinery.	1991-01-29
1661107	BOBCAT LOGO 	(Int'l Class: 37) Repair services for mobile, industrial, construction and excavating machinery; rental services for machinery; namely, rental of skid steer loaders, back hoes, and excavators	1991-10-15
1621833	BOBCAT LOGO 	(Int'l Class: 1) Hydraulic, hydrostatic, and transmission fluid, for use with machinery	1990-11-13
1110470	BOBCAT LOGO 	(Int'l Class: 12) Self-propelled tractor vehicles	1979-01-02
1153506	BOBCAT LOGO 	(Int'l Class: 42) Rental of skid steer loaders.	1981-05-05
4267606	 Bobcat BOBCAT ORANGE LOGO	(Int'l Class: 7) Earth moving, construction, and agricultural machines, namely, bulldozers, excavators, front-end loaders, backhoe loaders, skid-steer loaders, telehandlers, telescopic material handling machines, [. . .] filters and purifiers for machines, namely, purifiers for removing contaminants from the exhaust gasses emitted from machines	2013-01-01

U.S. Reg. No.	Trademark	Goods/Services	Reg. Date
		(Int'l Class: 12) Tractors; utility terrain vehicles; utility tool carriers, namely, tractors for carrying tools and utility terrain vehicles for carrying tools; tires; tire chains; trailer hitch covers; trailer hitch and wiring adapters; fitted covers for vehicles; fitted utility vehicle bed liners (Int'l Class: 35) Retail store services featuring construction and agricultural equipment and attachments for construction and agricultural equipment (Int'l Class: 37) Repair services for construction and agricultural equipment	
4170220		(Int'l Class: 7) Excavators, namely, hydraulic excavators	2012-07-10
4027919		(Int'l Class: 7) Bulldozers, front-end wheel loaders, backhoe loaders, skid steer loaders, articulated front-end loaders, compact track loaders, loading-unloading machines, all-wheel steer machines, namely skid-steer loaders with axles that are steerable, telehandlers	2011-09-20
2190158		(Int'l Class: 7) Power machinery; namely, skid-steer loaders, and excavators	1998-09-22
4030916		(Int'l Class: 7) Front-end wheel loaders, backhoe loaders, skid steer loaders, articulated front-end loaders, loading-unloading machines, all-wheel steer machines, namely, skid-steer loaders with axles that are steerable, telehandlers	2011-09-27
4110890		(Int'l Class: 7) Front-end wheel loaders, backhoe loaders, skid steer loaders, articulated front-end loaders loading-unloading machines, all-wheel steer machines, namely, skid-steer loaders with axles that are steerable; excavators, namely, hydraulic excavators, telehandlers (Int'l Class: 12) Utility vehicles, namely, utility terrain vehicles and utility tool carriers, namely, tractors for carrying tools and utility terrain vehicles for carrying tools; tractors	2012-03-13

A full list of Bobcat Company's BOBCAT registrations is available at **Exhibit B** (collectively the "BOBCAT Registrations").

20. Bobcat Company's BOBCAT Registrations include registrations that specifically cover rental services. *See, e.g.*, U.S. Registration Nos. 1153506, 1661107, 1661108, and 1153505.


21. Bobcat Company's BOBCAT Marks are well known, and even famous, in the United States and worldwide. Bobcat Company has received many awards and much recognition for its BOBCAT-branded equipment. For example, in 2004 the American Society of Agricultural Engineers honored Bobcat Company with the "Historic Landmark" award for inventing the BOBCAT-branded skid steer loader, in 2009 *Farm Innovation News* and *Roads and Bridges Magazine* gave awards to the BOBCAT-branded compact tractor and the BOBCAT-branded skid steer loader, and in 2020 Construction Equipment named several Bobcat Company equipment in its Top 100 Product Awards. A list of Bobcat Company's awards and recognitions are publicly available at <https://www.bobcat.com/company-info/brand-excellence/awards>. Bobcat Company's records are even on display at the Smithsonian as an example of an American story of manufacturing, marketing, and entrepreneurship.

Defendants' Unauthorized Use of the BOBCAT Marks

22. Upon information and belief, Bobcat Rentals is a self-described rental agency catering to the construction trade and is open 24 hours a day, 7 days a week.

23. Bobcat Rentals is using Bobcat Company's BOBCAT Marks without Bobcat Company's permission in connection with Bobcat Rentals' compact construction equipment rental business.

24. Upon information and belief, Christopher Walls is the President of Bobcat Rentals and owns and controls Bobcat Rentals.

25. Bobcat Company, through its attorneys, first contacted Mr. Walls in 2018 to demand that Mr. Walls cease use of the name "Bobcat Rentals Co." and the URL www.bobcatrentalsco.com, and to cease using Bobcat Company's Bobcat Logo Mark  in connection with Mr. Walls' business, including in connection with the business's logo and branding.

26. Following Mr. Walls' failure to comply with Bobcat Company's 2018 demand, on August 31, 2018 Bobcat Company instituted a Uniform Domain-Name Dispute Resolution

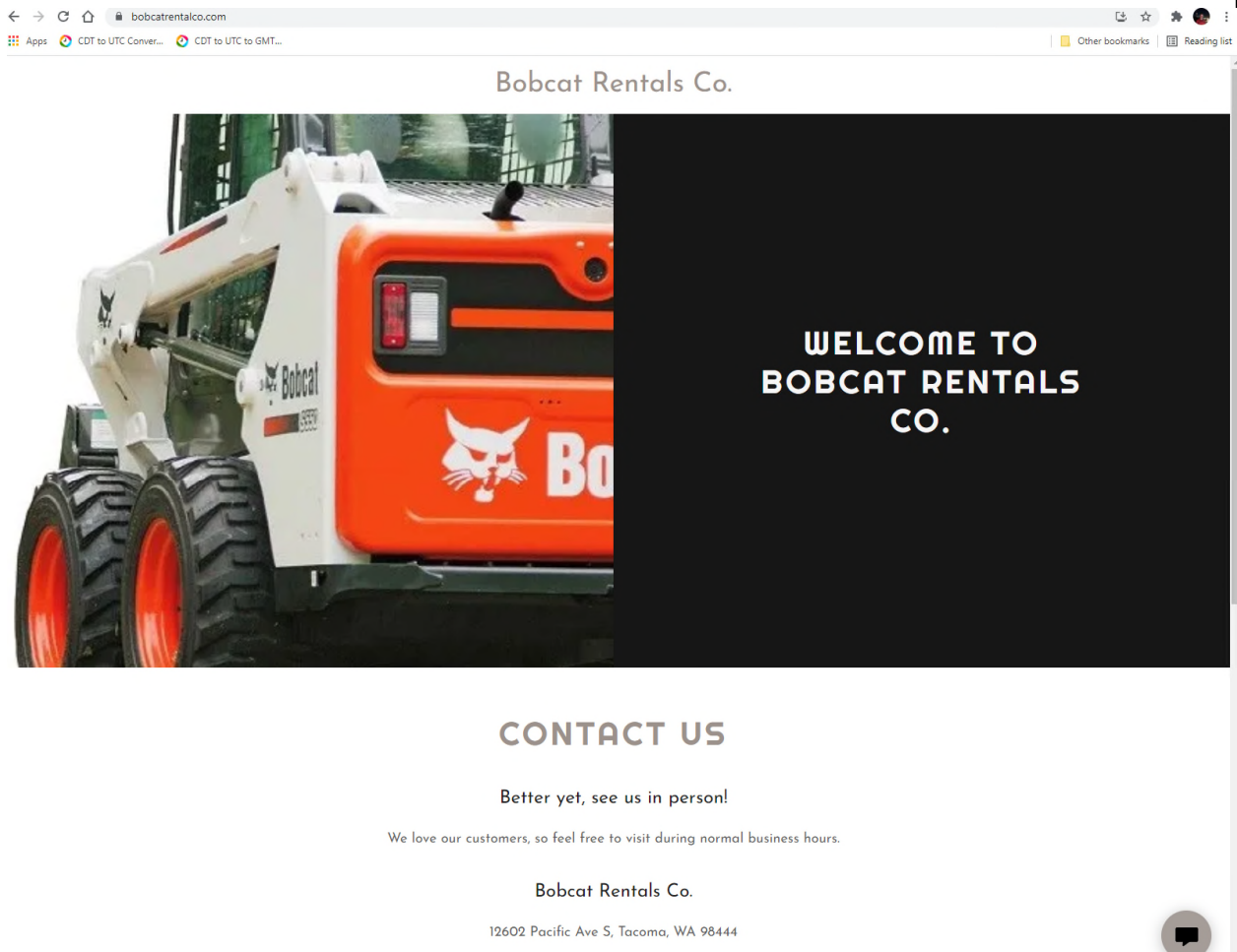
1 (“UDRP”) action. Bobcat Company’s UDRP action resulted in the <www.bobcatrentalsco.com>
2 domain name being transferred to Bobcat Company in late 2018.

3 27. Bobcat Company has also filed formal complaints with Facebook and Google
4 which successfully removed Mr. Walls’ and Bobcat Rentals’ posts and listings that used Bobcat
5 Company’s intellectual property without permission.

6 28. In or around June 2021, Bobcat Company learned Mr. Walls was again using
7 Bobcat Company’s BOBCAT Marks without permission.

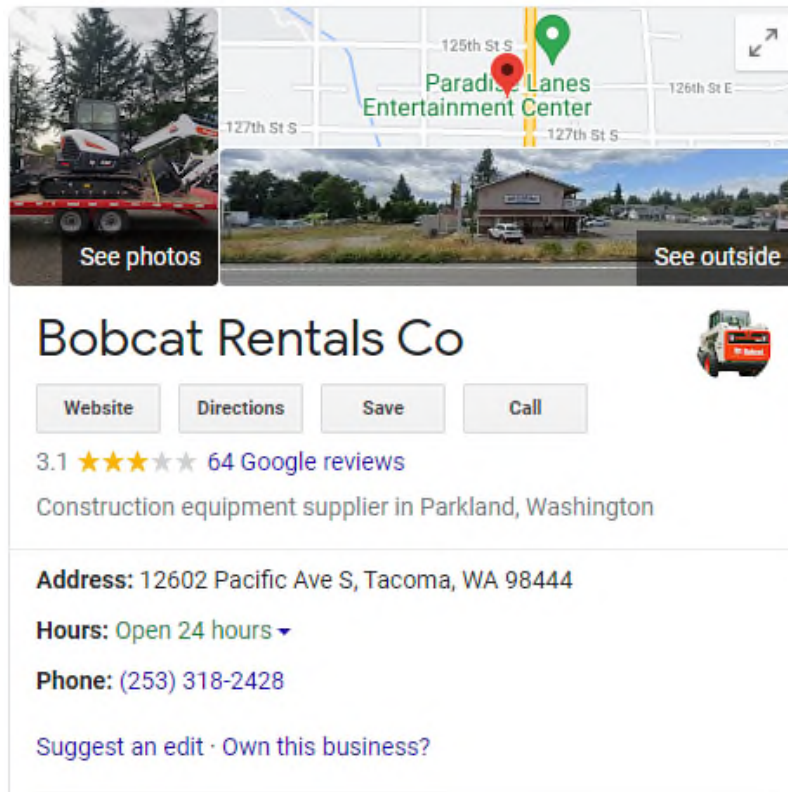
8 29. For example, Mr. Walls and Bobcat Rentals are using the BOBCAT Marks to
9 promote and operate Mr. Walls’ equipment rental business. The following are non-limiting
10 examples of Defendants’ unauthorized use of the BOBCAT Marks:



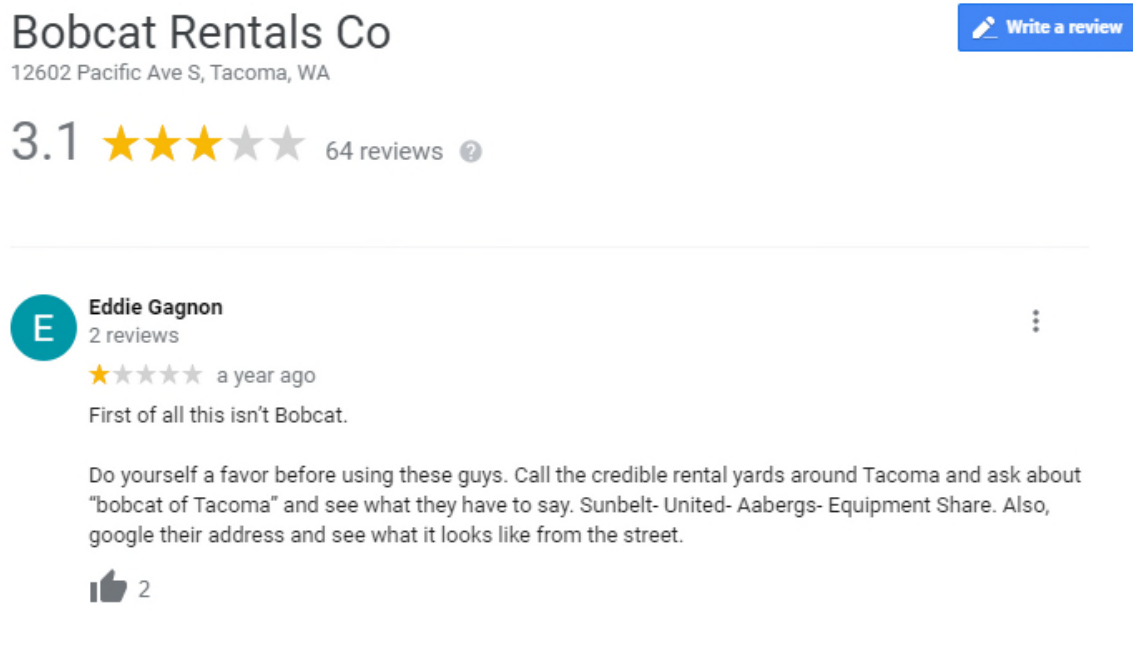


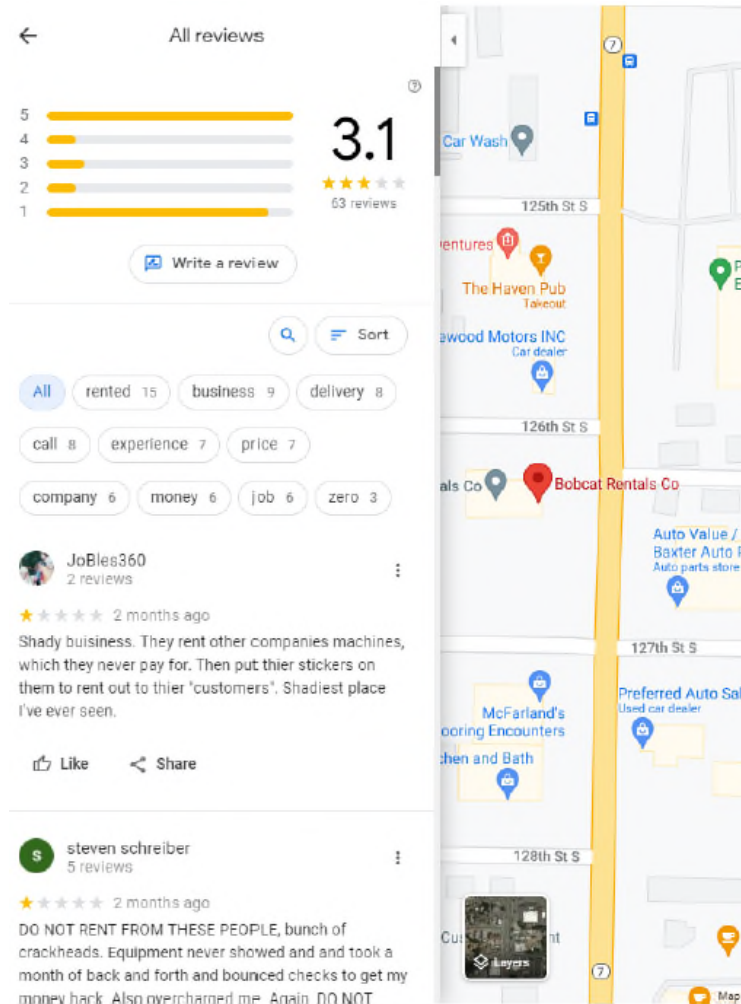
30. Indeed, Defendants have adopted a domain name, <www.bobcatrentalco.com>, that is nearly identical to the domain name Bobcat Company successfully filed its 2018 UDRP complaint against <www.bobcatrentalsco.com>.

31. Bobcat Rentals has received strong customer dissatisfaction with its services offered in connection with the unauthorized use of Bobcat Company's BOBCAT Marks. For example, Bobcat Rental's has a 3.1/5 star rating on Google Reviews, with many apparent customers dissatisfied with Bobcat Rental's service:



32. The following are non-limiting examples of purported Bobcat Rentals customers' reviews of Bobcat Rentals on Google:





33. Bobcat Rentals also has a 1/5 star customer rating on the Better Business Bureau's website, <https://www.bbb.org/us/wa/tacoma/profile/excavating-equipment/bobcat-rentals-co-1296-22561698/customer-reviews> (last accessed on November 18, 2021).

34. On July 8, 2021, counsel for Bobcat Company sent Mr. Walls a letter demanding Mr. Walls and Bobcat Rentals: (i) cease and desist all use of the BOBCAT Marks; (ii) permanently cease use of the Bobcat Rentals Co. name; (iii) remove all signage from Defendants' business, advertising, and other materials that incorporate the BOBCAT Marks; and (iv) transfer the domain name <www.bobcatrentalco.com> to Bobcat Company. A true and correct copy of the July 8, 2021 letter to Mr. Walls is attached as **Exhibit C**. Mr. Walls never responded to Bobcat Company's July 8, 2021 letter.

35. Counsel for Bobcat Company also requested Mr. Walls file any necessary paperwork with the Washington Secretary of State to effect the name change, if applicable since “Bobcat Rentals Co.” was formerly registered with the Washington Secretary of State but dissolved in 2014.

36. Rather than respond to Bobcat Company’s July 8, 2021 letter, on August 30, 2021 Mr. Walls filed to incorporate Bobcat Rentals Co. with the Washington Secretary of State.

Defendants’ Willful Behavior

37. Mr. Walls and his company, Bobcat Rentals, have been aware of Bobcat Company’s BOBCAT Marks and BOBCAT Registrations since at least 2018.

38. Mr. Walls and his company, Bobcat Rentals, continue to use the BOBCAT Marks without Bobcat Company’s permission and continue to disregard Bobcat Company’s demands.

39. Mr. Walls, and his company Bobcat Rentals, have failed to respond to or otherwise comply with Bobcat Company’s letters to date.

40. Despite Bobcat Company’s UDRP complaint against Mr. Walls’ <www.bobcatrentalsco.com> domain name, Mr. Walls subsequently created a new domain name, <www.bobcatrentalco.com>, that is virtually identical to the domain name Bobcat Company complained about in its UDRP complaint.

41. Accordingly, Defendants are aware of Bobcat Company’s BOBCAT Marks and have been aware of the BOBCAT Marks since at least 2018.

42. Notwithstanding Defendants’ knowledge of the BOBCAT Marks, Defendants continue to infringe by utilizing the BOBCAT Marks against Bobcat Company’s express objection in connection with the advertising, marketing, and operation of Bobcat Rentals Co.

COUNT I

Federal Trademark Infringement - Lanham Act Section 32(1) (15 U.S.C. § 1114(1))

43. Bobcat Company restates and incorporates by reference all previous allegations in paragraphs 1-41.

44. Defendants’ actions constitute trademark infringement under 15 U.S.C. § 1114.

1 45. Bobcat Company holds all right, title, and interest in the BOBCAT Marks,
2 including those covered by the BOBCAT Registrations (*see* **Exhibit B**).

3 46. Bobcat Company has used and continues to use the BOBCAT Marks to market
4 and sell compact equipment for construction, landscaping, and agriculture, and related goods and
5 services.

6 47. Moreover, Bobcat Company's equipment is sold, rented, and serviced throughout
7 the United States through an extensive dealer network, including through Peak Machinery,
8 Bobcat Company's authorized dealer and service provider in Washington, and each dealer is
9 granted authorization to use the BOBCAT Marks in connection with its business name, and a
10 domain name, pursuant to its dealer agreement.

11 48. The BOBCAT Marks are inherently distinctive and have acquired secondary
12 meaning, both individually and as a family.

13 49. Defendants are not an authorized dealer, servicer, or rental provider and are not
14 authorized to use Bobcat Company's BOBCAT Marks.

15 50. Defendants use the BOBCAT Marks in connection with equipment rental
16 services.

17 51. Defendants are using the BOBCAT Marks in order to convey, imply, or indicate
18 that Defendants' services are endorsed, sponsored, or otherwise approved by Bobcat Company.

19 52. The construction equipment rental services that Defendants offer are closely
20 related to, and in some instances, identical to the goods and services offered in connection with
21 the BOBCAT Marks, including those covered by Bobcat Company's BOBCAT Registrations.

22 53. The channels of trade used by Defendants and Bobcat Company, including
23 through Bobcat Company's dealers and authorized service providers, are overlapping.

24 54. Accordingly, Defendants' unauthorized use of the BOBCAT Marks to market and
25 sell Defendants' services has caused and/or is likely to cause customers to mistakenly believe
26 that Defendants' services are sponsored by and/or affiliated with Bobcat Company, constituting
27 Lanham Act trademark infringement.

1 55. Defendants' infringement is intentional, willful, and/or in reckless disregard of
2 Bobcat Company's rights in its BOBCAT Marks.

3 56. By infringing Bobcat Company's BOBCAT Marks, Defendants have caused
4 Bobcat Company to suffer and, unless enjoined by this Court, will cause Bobcat Company to
5 continue to suffer, substantial injury, including lost profits, for which Bobcat Company is
6 entitled to damages.

7 57. If Defendants' infringement is not enjoined, Bobcat Company will suffer
8 irreparable harm that cannot adequately be compensated by a monetary award.

9 **COUNT II**

10 **False Designation Of Origin - Lanham Act Section 43(a) (15 U.S.C. § 1125(a))**

11 58. Bobcat Company restates and incorporates by reference all previous allegations in
12 paragraphs 1-57.

13 59. Defendants' actions constitute false designation of origin under 15 U.S.C. § 1125.

14 60. Bobcat Company holds all right, title, and interest in the BOBCAT Marks,
15 including those covered by the BOBCAT Registrations (*see Exhibit B*).

16 61. Bobcat Company has used and continues to use the BOBCAT Marks to market
17 and sell compact equipment for construction, landscaping, and agriculture, and related goods and
18 services.

19 62. Moreover, Bobcat Company's equipment is sold, rented, and serviced throughout
20 the United States through an extensive dealer network, and each dealer is granted authorization
21 to use the BOBCAT Marks in connection with its business name, and a domain name, pursuant
22 to its dealer agreement.

23 63. The BOBCAT Marks are inherently distinctive and have acquired secondary
24 meaning, both individually and as a family.

25 64. Defendants are not an authorized dealer, servicer, or rental provider and are not
26 authorized to use Bobcat Company's BOBCAT Marks.
27

65. Defendants use the BOBCAT Marks in their entirety in connection with Bobcat Rentals' equipment rental services.

66. Defendants are using the BOBCAT Marks in order to convey, imply, or indicate that Defendants services are endorsed, sponsored, or otherwise approved by Bobcat Company.

67. The construction equipment rental services that Defendants offer are closely related to, and in some instances, identical to the goods and services offered in connection with the BOBCAT Marks, including as identified in the BOBCAT Registrations.

68. The channels of trade used by Defendants and Bobcat Company, including through Bobcat Company's authorized dealers and service providers, are overlapping.

69. Defendants' use of BOBCAT-formative marks to market and sell their services has caused and/or is likely to cause customers to mistakenly believe that Defendants' services originate from Bobcat Company, constituting Lanham Act false designation of origin.

70. Defendants' false designation is intentional, willful, and/or in reckless disregard of Bobcat Company's rights in its BOBCAT Marks.

71. By falsely designating its services, Defendants caused Bobcat Company to suffer and, unless enjoined by this Court, will cause Bobcat Company to continue to suffer substantial injury, including lost profits, for which Bobcat Company is entitled to damages adequate to compensate it.

72. If Defendants' false designation is not enjoined, Bobcat Company will suffer irreparable harm that cannot adequately be compensated by a monetary award.

COUNT III

Federal Unfair Competition - Lanham Act Section 43(a) (15 U.S.C. § 1125(a))

73. Bobcat Company restates and incorporates by reference all previous allegations in paragraphs 1-72.

74. Defendants' actions constitute unfair competition under 15 U.S.C. § 1125.

75. Bobcat Company holds all right, title, and interest in the BOBCAT Marks, including those covered by the BOBCAT Registrations (*see Exhibit B*).

1 76. Bobcat Company has used and continues to use the BOBCAT Marks to market
2 and sell compact equipment for construction, landscaping, and agriculture, and related goods and
3 services.

4 77. Moreover, Bobcat Company's equipment is sold, rented, and serviced throughout
5 the United States through an extensive dealer network, and each dealer is granted authorization
6 to use the BOBCAT Marks in connection with its business name, and a domain name, pursuant
7 to its dealer agreement.

8 78. The BOBCAT Marks are inherently distinctive and have acquired secondary
9 meaning, both individually and as a family.

10 79. Defendants are not an authorized dealer, servicer, or rental provider and are not
11 authorized to use Bobcat Company's BOBCAT Marks.

12 80. Defendants use the BOBCAT Marks in connection with Bobcat Rentals'
13 equipment rental services.

14 81. Defendants are using the BOBCAT Marks in order to convey, imply, or indicate
15 that Defendants services are endorsed, sponsored, or otherwise approved by Bobcat Company.

16 82. The construction equipment rental services that Defendants offer are closely
17 related to, and in some instances, identical to the goods and services contained in Bobcat
18 Company's BOBCAT Registrations.

19 83. The channels of trade used by Defendants and Bobcat Company, including
20 through Bobcat Company's authorized dealers and service providers, are overlapping.

21 84. Defendants' unfair competition with Bobcat Company was, and is, done willfully,
22 maliciously, and/or in an intentional disregard of Bobcat Company's rights.

23 85. As a direct and proximate result of Defendants' wrongful actions, Bobcat
24 Company has suffered, and continues to suffer, damage and loss.

COUNT IV

Federal Dilution – Lanham Act Section 43(a) (15 U.S.C. § 1125(c))

86. Bobcat Company restates and incorporates by reference all previous allegations in paragraphs 1-85.

87. Defendants’ actions constitute dilution by blurring and/or tarnishment under 15 U.S.C. § 1125(c).

88. Bobcat Company holds all right, title, and interest in the BOBCAT Registrations (*see Exhibit B*), for the BOBCAT Marks.

89. Bobcat Company has used and continues to use the BOBCAT Marks to market and sell compact equipment for construction, landscaping, and agriculture, and related goods and services.

90. Moreover, Bobcat Company’s equipment is sold, rented, and serviced throughout the United States through an extensive dealer network, and each dealer is granted authorization to use the BOBCAT Marks in connection with its business name, and a domain name, pursuant to its dealer agreement.

91. The BOBCAT Marks are inherently distinctive and have acquired secondary meaning, both individually and as a family.

92. As a result of Bobcat Company’s extensive distribution, sale, promotion, advertising, and public recognition of goods and services under its BOBCAT Marks, and the high quality of goods and services sold under Bobcat Company’s BOBCAT Marks, Bobcat Company’s BOBCAT Marks have become well-known and famous and are widely recognized in the United States and beyond as designating high quality goods and services originating exclusively with Bobcat Company.

93. As a result of their distinctiveness and widespread use and promotion throughout the United States, Bobcat Company’s BOBCAT Marks are distinctive and are individually “famous marks” within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

1 94. Defendants are not an authorized dealer, servicer, or rental provider and are not
2 authorized to use Bobcat Company's BOBCAT Marks.

3 95. Defendants use the BOBCAT Marks in their entirety in connection with Bobcat
4 Rentals' equipment rental services.

5 96. Defendants are using the BOBCAT Marks in order to convey, imply, or indicate
6 that Defendants services are endorsed, sponsored, or otherwise approved by Bobcat Company.

7 97. Defendants have conducted business in a fashion that has led to numerous
8 negative customer reviews.

9 98. Defendants' use of the BOBCAT Marks in connection with services that have
10 received negative customer reviews and/or sentiment has and will continue to negatively impact
11 the substantial good will and recognition associated with Bobcat Company's BOBCAT Marks.

12 99. Defendants' unauthorized use of the BOBCAT Marks dilutes Bobcat Company's
13 famous BOBCAT Marks and the BOBCAT Registrations.

14 100. Defendants' persistent unauthorized use of the BOBCAT Marks dilutes the
15 distinctive quality of Bobcat Company's famous BOBCAT Marks within the meaning of Section
16 43(c) and lessens the ability of the BOBCAT Marks to distinguish the products and services of
17 Bobcat Company. Defendants' unauthorized use therefore blurs the distinctiveness of Bobcat
18 Company's famous BOBCAT Marks and the BOBCAT Registrations.

19 101. Defendants' continued unauthorized use of the BOBCAT Marks in connection
20 with Defendants' services is likely to impair the distinctiveness, and cause dilution by blurring,
21 of Bobcat Company's famous BOBCAT Marks in violation of 15 U.S.C. § 1125(c).

22 102. Additionally, and/or alternatively, a negative association arises from the
23 Defendants' unauthorized use of the BOBCAT Marks that tarnishes and harms the reputation of
24 Bobcat Company's famous BOBCAT Marks and BOBCAT Registrations. As a non-limiting
25 example, Bobcat Company's famous BOBCAT Marks are associated with high quality compact
26 equipment originating exclusively from Bobcat Company, including rentals of same. Defendants
27 have used the BOBCAT Marks in a manner that has led to significant negative reviews and

1 customer experiences such that Defendants' unauthorized use of the BOBCAT Marks has and
2 will continue to tarnish and harm the reputation of Bobcat Company, Bobcat Company's
3 BOBCAT Marks, and the BOBCAT Registrations.

4 103. Accordingly, continued unauthorized use of the BOBCAT Marks in connection
5 with Defendants' services is likely to tarnish the reputation, and thus cause dilution by
6 tarnishment, of Bobcat Company's famous BOBCAT Marks in violation of 15 U.S.C. § 1125(c).

7 104. If Defendants' actions are not enjoined, Bobcat Company will suffer irreparable
8 harm that cannot adequately be compensated by a monetary award.

9 **COUNT V**

10 **Common Law Trademark Infringement**

11 105. Bobcat Company restates and incorporates by reference all previous allegations in
12 paragraphs 1-104.

13 106. Defendant's unauthorized use of the BOBCAT Marks infringes Bobcat
14 Company's rights in the BOBCAT Marks in violation of Washington common law.

15 107. Bobcat Company has used and continues to use the BOBCAT Marks to market
16 and sell compact equipment for construction, landscaping, and agriculture, and related goods and
17 services.

18 108. Moreover, Bobcat Company's equipment is sold, rented, and serviced throughout
19 the United States through an extensive dealer network, and each dealer is granted authorization
20 to use the BOBCAT Marks in connection with its business name, and a domain name, pursuant
21 to its dealer agreement.

22 109. The BOBCAT Marks are inherently distinctive and have acquired secondary
23 meaning, both individually and as a family.

24 110. Defendants are not an authorized dealer, servicer, or rental provider and are not
25 authorized to use Bobcat Company's BOBCAT Marks.

26 111. Defendants use the BOBCAT Marks in connection with Bobcat Rentals'
27 equipment rental services.

112. Defendants are using the BOBCAT Marks in order to convey, imply, or indicate that Defendants' services are endorsed, sponsored, or otherwise approved by Bobcat Company.

113. The construction equipment rental services that Defendants offer are closely related to, and in some instances, identical to the goods and services provided in connection with the BOBCAT Marks, including those contained in Bobcat Company's BOBCAT Registrations.

114. The channels of trade used by Defendants and Bobcat Company, including through Bobcat Company's authorized dealers and service providers, are overlapping.

115. Defendants' unauthorized use of the BOBCAT Marks to market and sell Defendants' services has caused and/or is likely to cause customers to mistakenly believe that Defendants' services are sponsored by and/or affiliated with Bobcat Company.

116. Defendants' actions constitute trademark infringement under state common law.

117. Defendants' infringement is intentional, willful, and/or in reckless disregard of Bobcat Company's trademark rights in its BOBCAT Marks.

118. By infringing Bobcat Company's BOBCAT Marks, Defendants have caused Bobcat Company to suffer and, unless enjoined by this Court, will cause Bobcat Company to continue to suffer, substantial injury, including lost profits, for which Bobcat Company is entitled to damages.

119. If Defendants' infringement is not enjoined, Bobcat Company will suffer irreparable harm that cannot adequately be compensated by a monetary award.

PRAYER FOR RELIEF

WHEREFORE Bobcat Company seeks the following relief from this Court:

A. A judgment against Defendants that Defendants have infringed, and continue to infringe, Bobcat Company's BOBCAT Marks in violation of 15 U.S.C. § 1114;

B. A judgment against Defendants that Defendants have infringed, and continue to infringe, Bobcat Company's BOBCAT Marks in violation of Washington state common law;

C. An award of damages adequate to compensate Bobcat Company for Defendants' infringement, but no less than the damages and/or disgorgement of profits permitted by 15

1 U.S.C. § 1117 and any other applicable authority;

2 D. A judgment that Defendants' trademark infringement has been, and continues to
3 be, intentional, willful, and/or reckless;

4 E. A judgment against Defendants that Defendants have committed, and continue to
5 commit, false designation of origin in violation of 15 U.S.C. § 1125;

6 F. A judgment that Defendants' false designation of origin has been, and continues
7 to be, intentional, willful, and/or reckless;

8 G. An award of damages adequate to compensate Bobcat Company for Defendants'
9 false designation of origin, but no less than the damages and/or disgorgement of profits permitted
10 by 15 U.S.C. § 1117 and any other applicable authority;

11 H. A judgment against Defendants that Defendants have unfairly competed, and
12 continues to unfairly compete, against Bobcat Company in violation of 15 U.S.C. § 1125;

13 I. A judgment that Defendants' unfair competition has been, and continues to be,
14 intentional, willful, and/or reckless;

15 J. An award of damages adequate to compensate Bobcat Company for Defendants'
16 unfair competition, but no less than the damages and/or disgorgement of profits permitted by 15
17 U.S.C. § 1117 and any other applicable authority;

18 K. A judgment against Defendants that Defendants have diluted, and continue to
19 dilute, Bobcat Company's famous BOBCAT Marks in violation of 15 U.S.C. § 1125;

20 L. A judgment that Defendants' dilution has been, and continues to be, intentional,
21 willful, and/or reckless;

22 M. An award of damages adequate to compensate Bobcat Company for Defendants'
23 dilution, but no less than the damages and/or disgorgement of profits permitted by 15 U.S.C. §
24 1117 and any other applicable authority;

25 N. An award of compensatory and punitive damages, under the authority described
26 above and any other applicable authority;

27 O. Injunctive relief, both preliminary and permanent, pursuant to 15 U.S.C. § 1116

1 and/or any other applicable authority, prohibiting Defendants from continuing to violate Bobcat
2 Company's rights in any way;

3 P. A judgment that Defendants' acts of trademark infringement, false designation or
4 origin, unfair competition, and dilution warrant a finding that this is an exceptional case;

5 Q. An award of reasonable attorneys' fees incurred herein pursuant to 15 U.S.C.
6 § 1117 and/or any other applicable authority;

7 R. An award of Bobcat Company's costs and expenses;

8 S. An award of pre- and post-judgment interest; and

9 T. Such other and further relief as the Court may deem just and proper.

10 **JURY DEMAND**

11 Bobcat Company demands a trial by jury on all issues properly tried thereto.

12
13 DATED this 3rd day of December, 2021.

14 By: /s/ Lauren B. Rainwater

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